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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington D.C. 20554

Re: CC Docket No. 96-45; Virgin Mobile USA, L.P. Petition for
Forbearance and Petitions for Limited Designation as an Eligible
Telecommunications Carrier in New York, North Carolina,
Pennsylvania, Tennessee and Virginia

Dear Ms. Dortch:

Virgin Mobile USA, L.P. ("Virgin Mobile"), by undersigned counsel, hereby replies to the filing submitted by the Pennsylvania Public Utility Commission ("PUC") on February 26, 2009 in the above-referenced proceeding. For the reasons set forth herein, the Commission should dismiss the PUC's eleventh-hour attempt to oppose Virgin Mobile's pending requests for forbearance and designation as an eligible telecommunications carrier ("ETC"). Even if it were to accede to the PUC's assertion of jurisdiction over the ETC designation process for wireless carriers in Pennsylvania, the Commission should reject as untimely and substantively flawed the PUC's request to deny Virgin Mobile's forbearance petition. As more fully

discussed below, Virgin Mobile's forbearance request must be approved because it fully satisfies the applicable statutory requirements and is identical to the FCC-approved forbearance request of TracFone Wireless ("TracFone").

Virgin Mobile appreciates the PUC's desire to review its ETC designation request to ensure that Pennsylvanians receive the full benefit of Virgin Mobile's Lifeline service offering. However, the PUC has had ample opportunity to assert jurisdiction over the ETC designation process for wireless carriers in the 15 months since Virgin Mobile originally filed its request. Indeed, the FCC has approved various ETC designation applications for wireless carriers in Pennsylvania during the past several years on the grounds that the PUC lacked jurisdiction over the process.¹ In none of these proceedings did the PUC assert jurisdiction over such requests.

Virgin Mobile similarly questions the arbitrary and rushed process by which the PUC now attempts to assert jurisdiction. The PUC announced its purported jurisdictional authority after conducting a brief proceeding that failed to seek public comment and, in doing so, issued a notice lacking any reasoned analysis. The FCC should not countenance this type of last-minute action by state commissions, which not only complicates the ETC designation process, but also imposes additional and unnecessary costs on ETC applicants.

Even if the FCC were to accept the PUC's assertion of jurisdiction over the ETC designation process for wireless carriers, it should reject the PUC's call to deny Virgin Mobile's pending request for forbearance from the facilities-based requirement of Section 214(a)(1)(A) of the Act. Virgin Mobile will not swell the record in this proceeding with a detailed analysis of the Commission's undisputed authority to forbear from enforcement of any statutory or regulatory requirement. It suffices to say, however, that Virgin Mobile's request for forbearance satisfies each prong of the Section 10(a) forbearance analysis, thus requiring the FCC to forbear from application of the facilities-based requirement. Equally important, Virgin Mobile's forbearance request is identical to the forbearance request of TracFone, which the FCC approved in 2005.² The PUC's attempt to distinguish Virgin Mobile's request from the FCC-approved request of TracFone contains no reasoned

¹ See *In the Matter of Federal-State Joint Board on Universal Service, Petition of NPCR, Inc d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania*, Order, 19 FCC Rcd 16,530 (2004).

² See *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15,095 (2005).

justification and is entirely unavailing. Accordingly, the Commission has no basis for denying Virgin Mobile's pending request.

Virgin Mobile submits that there are no impediments to Commission approval of its outstanding petitions for forbearance and ETC designation and respectfully asks that the Commission expeditiously approve these requests.

Respectfully submitted,

VIRGIN MOBILE USA, L.P.

/s/

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